

**IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA**

CR No.83 of 2007.

Date of decision:20.06.2007

H.P. Wakf Board, Shimla.

...Petitioner

Versus

Prahlad Singh & Another

...Respondents

Coram

The Hon'ble Mr.Justice Dev Darshan Sud, J.

Whether approved for reporting?¹

**For the Petitioner: Mr.R.K. Bawa, Senior Advocate with
 Mr.Inderjit Narwal, Advocate.**

**For the Respondents: Mr.Bhupender Gupta, Senior
 Advocate with Mr.Neeraj Gupta,
 Advocate.**

Dev Darshan Sud, J.

Learned counsel for the petitioner has submitted that the First Appeal may be converted into a revision petition under Section 83(9) of the Wakf Act, 1995, (hereinafter referred to as the 'Act'). Learned counsel submitted that the appeal had been filed against the order passed by the learned District Judge exercising the powers of Tribunal under the Act and as such was appealable under Order 43 of the Code of Civil Procedure may not be maintainable.

I have heard learned counsel for the parties.

Section 83 (9) of the Act provides:-

¹ *Whether reports of Local Papers may be allowed to see the judgment?*

"(9) No appeal shall lie against any decision or order whether interim or otherwise, given or made by the Tribunal:

Provided that a High Court may, on its own motion or on the application of the Board or any person aggrieved, call for and examine the records relating to any dispute, question or other matter which has been determined by the Tribunal for the purpose of satisfying itself as to the correctness, legality or propriety of such determination and may confirm, reverse or modify such determination or pass such other order as it may think fit".

The order would thus be revisable. It is ordered that the appeal be treated as a revision having been instituted under Section 83(9) of the Act.

This revision petition has been filed against the order of the Wakf Tribunal, Kangra at Dharamshala in Civil Miscellaneous Application No.1 of 2007, instituted by the petitioner who is the petitioner before the Tribunal.

A suit for possession in respect of land and property as described in the plaint was filed by the petitioner herein and an application under Order 39 Rule 1 and 2 of the Code of Civil Procedure praying for interim relief was also instituted. Initially, learned Tribunal passed an order of status quo, but after hearing parties, has dismissed the application. It is not necessary for me to elaborately consider the facts (elaborately). Suffice it to say that the

learned Tribunal, after a detailed examination of the material on the record, has prima facie come to the conclusion that balance of convenience is not in favour of the petitioner. For reaching this conclusion, learned trial Court inter alia, considered two previous suits which had been instituted by the Punjab Wakf Board, (the predecessor-in-interest of the petitioner in the year 1966 and 1971), wherein similar relief was asked for against the respondents but declined by the Civil Court. The learned Senior Sub Judge, Kangra at Dharamshala had rendered his findings in that suit, non-suiting the Board and holding in favour of the respondents. These decisions having become final, the learned Tribunal concluded that no prima facie case is made out in favour of the petitioner.

The defendants have also raised preliminary defence that the land was evacuee property which has been validly sold to them.

Learned counsel appearing for the petitioner has submitted that the findings did not bind the petitioner and can be challenged at any point of time without limitation. For this purpose, he seeks support from Section 107 of the Act. This sweeping generalization of a legal principle cannot be accepted. I have seen the plaint filed by the petitioner and note that no reference has been made to the previous litigation, which was held against the plaintiff/petitioner. Learned counsel pleaded that dismissal of the application challenged in this revision would vest rights in the defendants who would claim equities in this suit. This is

rather startling proposition. Obviously, the property will be subject to the principle of lis pendens. On merits I find that the learned Tribunal has considered the basic ingredients for grant of injunction and had concluded that no prima facie case has been made out by the plaintiff-petitioner. I do not find any perversity in the appreciation or consideration of the facts and the law on record. In the circumstances, this revision is dismissed. There shall be no order as to costs. The learned Tribunal will proceed with the matter totally uninfluenced by the observations which have been made by me.

June 20, 2007
(aks)

(Dev Darshan Sud)
Judge.